

1 Remarks

2 Under separate cover, applicants are transmitting a Request for Extension for two
3 months, and the required fee (\$210), to allow a Continuation application to be filed on or
4 before February 3, 2004.

5 This Preliminary Amendment is filed in response to the rejections contained in the final
6 rejection dated September 3, 2003 of the parent application Serial No. 09/816,036.

7 Independent claim 18 was rejected for obviousness over Briggs et al in view of
8 Richards et al. Applicants herein submit that the Richards reference is from a non-analogous
9 art and should not be combined with the Briggs reference to form a basis for rejection of claim
10 18. The Office action at page 4 describes the "problem" in the very broad sense of "tracking
11 and ordering inventory." The undersigned submits that that description of the problem is
12 unduly broad. The problems confronting the applicants in keeping track of perhaps more than
13 100 separate types of labels carried in more than 100 cassettes at each labelling site is
14 entirely different from the problem addressed in the Richards et al patent. The Richards et
15 al patent was in fact primarily concerned with the problem of designing a "modular"
16 xerographic machine which was easily serviced and repaired by replacement of modules.
17 Even if the "problem" faced by Richards is described in somewhat broader terms of "tracking
18 and ordering" inventory of Xerox paper, that is an entirely different problem than that faced
19 by the applicants here. As shown best in Fig. 1 of the Richard et al patent, the paper supply
20 is shown at 18, and it is a very simple matter for the copy machine to simply count the single
21 sheets of paper that are passed through the machine from one or two paper trays.

22 In contrast, the problem faced by applicants is to identify individual, unique cassettes,
23 then counting and inventorying the total number and identity of labels stored in a large number
24 of cassettes each carrying different labels. Any given cassette can be placed into the
25 machine, some portion of the labels used from that cassette and then the cassette is removed
26 from the labeling machine. At a later point in time, that same cassette may be reloaded into

1 the machine to have another portion of its labels utilized. The undersigned submits that the
2 "problem" confronting the applicants in dealing with multiple cassettes each containing a
3 uniquely different spool of labels is a much different inventorying problem than that faced by
4 Richards, which is simply counting the number of sheets of paper removed from paper tray
5 18. The problem faced by applicants includes the threshold problem of identifying which
6 labels are carried on a specific cassette wherein that cassette is selected from one of many
7 cassettes and loaded into a single cassette carrier in the labelling machine. The problem
8 faced by Richards is much simpler, because the Xerox machine will have one tray for carrying
9 only 8½ by 11 paper, and a second tray for carrying only 8½ by 13 paper. The Xerox
10 machine, itself, identifies the paper size by having a unique tray for each size. The present
11 invention includes a mechanism carried by each cassette which identifies the unique cassette,
12 its unique label, and the number of unused labels remaining.

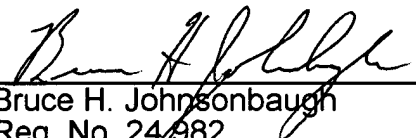
13 A similar issue was faced in Lindemann Maschinenfabrik GMBH v. American Hoist &
14 Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed.Cir.1984). In that case, the Federal Circuit
15 held that the lower court erred by defining the "problem" too broadly. The district court
16 characterized the problem as "compressing waste materials." The Court of Appeals held that
17 the problem should be more narrowly described as the "crushing of massive metal scrap." In
18 the similar decision of Freund Industrial Co. v. Driam Metallprodukt GmbH & Co. KG, 12
19 USPQ2d 1641 (S.D.N.Y.1989), the Southern New York District Court narrowed the
20 appropriate field of prior art. The invention in that case related to an apparatus for coating
21 pharmaceutical tablets. The party challenging the patent wanted to include prior art from the
22 field of "industrial drying machines" but the district court found that prior art to be non-
23 analogous on the ground that the "tablet coating machines" of the invention involved special
24 requirements for pharmaceuticals and the nature of the tablets differed significantly from the
25 drying machines utilized in heavy industry.

1 For these reasons, the Richards et al patent should be considered as non-analogous
2 art and claim 18 should be found to be patentable.

3 Claim 24 as submitted herewith describes the method included in the present
4 application of preventing mismatching between the fruits or vegetables about to be labeled
5 and labels which are about to be applied to those fruits or vegetables in a labeling run.
6 According to the invention of claim 24, the method compares the identity of the stored label
7 with the coding for the particular fruit or vegetable prior to beginning a labeling run and, if the
8 identifying codes do not match, the labeling run will be postponed until the codes do match.

9 For the above reasons stated, the undersigned submits that all claims remaining in the
10 application are in condition for allowance. Favorable action is hereby requested.

11 Respectfully submitted,
12

13 By  1/30/04
14 Bruce H. Johnsonbaugh
15 Reg. No. 24,982
16 Attorney for Applicants

17 ECKHOFF & HOPPE
18 333 Sacramento Street
19 San Francisco, CA 94111
20 Telephone: 415-391-7160
21 9218.105
22
23
24
25
26